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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,597	09/28/2004	Susan Kirkwood	SK1001R	5596
7733 7590 04/11/2007 WALKER & JOCKE, L.P.A. 231 SOUTH BROADWAY STREET MEDINA, OH 44256			EXAMINER SANTOS, ROBERT G	
			ART UNIT	PAPER NUMBER
			3673	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/711,597

Applicant(s)

KIRKWOOD, SUSAN

Examiner

Robert G. Santos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 12-19 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 20-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5-7, 9, 11 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,679,263 to Honer. As concerns claims 1, 7, 9 and 20, Honer '263 shows the claimed limitations of an apparatus comprising a thin flexible strip (10-12 & 24) characterized by a plurality of layers of fabric (as described in column 2, lines 13-20, 24-25 & 34-37); a width; a length and a thickness; and further having a first end (21); a second end (22); a center (10, 24), wherein the center includes a pocket formed between two of the layers of fabric and an insert adapted to be inserted in the center pocket thereby creating a thickness in the center of the strip that is greater than the thickness of the first and second ends (as shown in Figure 1 and as described in column 2, lines 10-14); an inner surface; an outer surface; and a plurality of fasteners (28) affixed to locations selected from the first end of the strip, the second end of the strip, and the center of the strip on the inner surface, wherein the fasteners are adapted to permit the releasable attachment of the first end to at least one of the second end and the center and to permit the releasable attachment of the second end to at least one of the first end and the center. With regards to claim 2 and with further regards to claim 20, the reference discloses a condition wherein the fasteners comprise hook and loop tape (see column 2, lines 64-68 and column 3,

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lines 1-8). As concerns claims 5 & 6 and with further regards to claim 20, the reference is considered to show the use of a first fastener (28) affixed to the inner surface of the strip adjacent the first end (21) of the strip; a second fastener (28) affixed to the inner surface of the strip adjacent the center (24) of the strip; a third fastener (28) affixed to the outer surface of the strip adjacent the first end of the strip (as described in column 3, lines 6-7) and a fourth fastener (28) affixed to the inner surface of the strip adjacent the second end (22) of the strip. With regards to claim 11, the reference is considered to show a condition wherein the insert is made of semi-firm foam in column 2, lines 11-13.

3. Claims 1, 2, 6, 7, 9 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,609,188 to Lind. As concerns claims 1, 7, 9 and 20, Lind '188 shows the claimed limitations of an apparatus comprising a thin flexible strip (32) characterized by a plurality of layers of fabric (33, 34); a width; a length and a thickness; and further having a first end; a second end; a center, wherein the center includes a pocket formed between two of the layers of fabric (as shown in Figure 4) and an insert (22) adapted to be inserted in the center pocket thereby creating a thickness in the center of the strip that is greater than the thickness of the first and second ends; an inner surface; an outer surface; and a plurality of fasteners (37, 38) affixed to locations selected from the first end of the strip, the second end of the strip, and the center of the strip on the inner surface, wherein the fasteners are adapted to permit the releasable attachment of the first end to at least one of the second end and the center and to permit the releasable attachment of the second end to at least one of the first end and the center. With regards to claim 2 and with further regards to claim 20, the reference discloses a condition

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wherein the fasteners comprise hook and loop tape (see column 2, lines 63-65). As concerns claim 6 and with further regards to claim 20, the reference is considered to show the use of a first fastener (38) affixed to the inner surface of the strip adjacent the first end of the strip; a second fastener (37) affixed to the outer surface of the strip adjacent the second end of the strip.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honer '263 in view of Gershman, or alternatively, as being unpatentable over Lind '188 in view of Gershman. Honer '263 and Lind '188 do not specifically disclose the use of fasteners comprising hooks and eyes or snaps. Gershman teaches the use of hook and loop fasteners which may be used to replace snaps and hooks and eyes. The skilled artisan would have found it obvious at the time the invention was made to provide the respective devices of Honer '263 and Lind '188 with fasteners comprising either hook and loop tape, hooks and eyes or snaps since these fastening means have long been known in the art as functional equivalents as taught by Gershman.

6. Claims 8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honer '263 in view of U.S. Pat. N. 5,708,998 to Torbik. Honer '263 does not specifically disclose a

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condition wherein the strip fabric is made of a woven polyester /cotton blend. Torbik '998 provides the basic teaching of an assistance device (100) comprising a fabric casing (150, 160) formed from a polyester-cotton blend (as described in column 4, lines 61-62). The skilled artisan would have found it obvious at the time the invention was made to provide the apparatus of Honer '263 with a strip fabric made of a woven polyester/cotton blend in order to provide the device with "the characteristics of being hypoallergenic, durable, and easy to maintain" (see Torbik '998, column 4, lines 61-63).

7. Claims 8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lind '188 in view of U.S. Pat. No. 4,461,288 to Curtis. Lind '188 does not specifically disclose a condition wherein the strip fabric is made of a woven polyester /cotton blend. Curtis '288 provides the basic teaching of a plurality of straps (26, 30 and 32) formed from a "cotton polyester blend webbing" (as described in column 3, lines 49-51). The skilled artisan would have found it obvious at the time the invention was made to provide the apparatus of Lind '188 with a strip fabric made of a woven polyester/cotton since the use of straps having a polyester/cotton blend material composition is well-known in the art as taught by Curtis '288.

8. Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honer '263 in view of U.S. Pat. No. 6,859,965 to Gourd. Honer '263 discloses the use of a flexible foam insert as opposed to an insert comprising a folded washcloth or a multi-layered terry-cloth form. Gourd '965 provides the basic teaching of an assistance device (10) comprising an insert which may comprise foam-based cushioning material or cloth material (as described in column

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5, lines 48-52). The skilled artisan would have found it obvious at the time the invention was made to replace the foam insert of Honer '263 with a folded washcloth or multi-layered terry-cloth form since such a modification would have been generally considered as a substitution of art-recognized equivalents as taught by Gourd '965.

9. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lind '188. Lind '188 does not specifically disclose the exact and length and width dimensions as recited in Applicant's claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Lind '188 with a strip having Applicant's claimed length and width dimensions since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Response to Amendment***

In response to Applicant's arguments on pages 8-12 of her amendment stating that Honer '263 and Lind '188 do not disclose or suggest a "mobility assistance device", it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Furthermore, in response to Applicant's arguments on pages 9 and 11 of her amendment that Honer '263 does not disclose or suggest a "thin flexible strip", the examiner respectfully asserts that the terms "thin" and "flexible" are simply relative and are thereby subject to broad interpretation. Claims

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in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Moreover, in response to Applicant's arguments on page 14 of her amendment regarding Gershman, the examiner respectfully asserts that this reference was basically applied to show the functional equivalence between various types of simple fastening assemblies which have long been known in the art; the argument that one type of fastener is more difficult to manipulate than another is merely speculative. Hence, the rejections under the Gershman reference have been respectfully maintained.

Lastly, in response to Applicant's arguments on pages 15-18 of her amendment that there is no suggestion to combine the references, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, although the motivations to make the modifications which were stated in the Office action were not expressly articulated within the references, one of ordinary skill in the art would have still found it obvious to combine the references simply due to the advantageous effects achieved by combining the structural elements inherent to the devices



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disclosed in the references. This it is believed that the examiner has provided a *prima facie* case of obviousness absent the use of impermissible hindsight.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wicks '262, Kriesel '367, Perry '078, Glass '995, Lundrigan et al. '814, Drulias et al. '942, Phalen '122 and Lewis '114.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
April 4, 2007